

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of)	DOCKET NO. 900558-WU
Certificate No. 347-W held by MARION)	
UTILITIES, INC. in Marion County and)	ORDER NO. 23944
Cancellation of Certificate No. 385-W)	
held by WINDGATE UTILITIES)	ISSUED: 12-28-90
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER GRANTING TRANSFER
AND REQUIRING REFUND OF CUSTOMER DEPOSITS

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE
FOR PURPOSES OF THIS TRANSFER

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is final except for the establishment of rate base. This action is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

TRANSFER

On June 18, 1990, Marion Utilities, Inc. (Marion) filed an application with this Commission for approval of the transfer of utility assets to Marion from Windgate Utilities (Windgate), amendment of Certificate No. 347-W held by Marion to include the added service area, and cancellation of Certificate No. 385-W held by Windgate.

DOCUMENT NUMBER-DATE

11391 DEC 28 1990

FPSC-RECORDS/REPORTING

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Windgate is a Class C utility providing water service to approximately 84 residential customers in the Windgate Estates and the Bordering Oaks Subdivisions. Marion is a Class B utility operating 21 water systems in Marion County. Marion has been regulated by this Commission since 1983.

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. In particular, the application contains:

- a) A check in the amount of \$150.00, which is the correct filing fee as prescribed by Rule 25-30.020, Florida Administrative Code.
- b) Adequate legal description pursuant to Rule 25-30.035, Florida Administrative Code. Said territory to be served is described as being in Marion County, and more particularly as described in Appendix A attached.
- c) Proof of notice to all customers of record pursuant to 25-30.030(g), Florida Administrative Code.
- d) Proof of notice to all interested governmental and regulatory agencies, and all utilities within a four mile radius of the territory to be served, and proof of advertisement in a newspaper of general circulation in the county, as prescribed by Rule 25-30.030, Florida Administrative Code.

No objection to the Notice of Application has been filed and the time for doing so has expired.

On October 24, 1990, the Department of Environmental Regulation (DER) informed Windgate that it was deficient in maintenance, chlorine and chemical analysis testing, and backflow prevention. Windgate was given 60 days from October 24, 1990 to correct the deficiencies. Marion has agreed to correct the deficiencies cited by DER if Windgate fails to do so.

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The principles of Windgate no longer desire to be in the utility business. Because Marion has the expertise and financial ability to operate this utility, we find that the transfer is in the public interest and it is, therefore, approved.

Currently, Marion holds Certificate No. 347-W. That certificate shall be amended to include the areas served by Windgate as described in Attachment A to this Order, which by reference is incorporated herein. Certificate No. 385-W, held by Windgate, shall be returned to this Commission for cancellation.

RATE BASE

In its application Marion submitted \$18,178 as rate base for Windgate. This figure comes from Windgate's 1989 Annual Report. We audited the books and records of Windgate to determine rate base at the time of transfer. Windgate was unable to provide documentation to substantiate the original cost of the plant. We received an original cost study prepared by Marion that estimated \$61,211 as the original cost of Windgate. Most of the costs are reasonable; however, the cost study reflects what plant would cost at today's prices. Therefore, we trended the costs back in time to reflect the value of the plant at the time it was placed into service. Accordingly, we find the correct utility plant-in-service amount to be \$56,413.

The utility plant site was purchased as part of 30 acres that has been platted into the Windgate Estate Subdivision. The purchase price for the 30 acres was \$90,000, or an average price of \$3,000 per acre. The water plant site comprises .5/ acres; therefore, the value of the land is \$1,710.

The original cost study does not address accumulated depreciation. The plant was installed in 1979. We have calculated accumulated depreciation from 1980 to 1990 to be \$15,533, using Commission approved rates pursuant to Rule 25-30.140, Florida Administrative Code.

The transmission and distribution systems for the Bordering Oaks Subdivision are fully contributed; therefore, the \$22,597 cost of the system will be treated as contributions-in-aid-of-construction (CIAC). 34 customers in Windgate Estates were not charged the \$350 connection charge authorized in Windgate's tariff as approved by Commission Order No. 11623, while 50 Bordering Oaks

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customers were charged. Those connection charges collected were not identified as CIAC on Windgate's books. As of the date of the purchase agreement, Windgate had 84 customers; therefore the \$350 connection charge must be imputed as CIAC for all customers, resulting in \$29,400 as imputed CIAC. This sum added to the already existing CIAC of \$22,597 results in total CIAC of \$51,997. CIAC amortization, using the depreciation rates pursuant to Commission rule, is \$12,018.

An acquisition adjustment results when the purchase price differs from the utility's rate base as of the date of transfer. Marion has not requested an acquisition adjustment. It is the policy of this Commission not to allow a subsequent purchase of a utility at a premium or discount to affect the rate base calculation in the absence of extraordinary circumstances. We have found no extraordinary circumstances, either financial or system related, to justify an acquisition adjustment; therefore, there shall be no acquisition adjustment as a result of this sale.

Our calculation of rate base is shown on Schedule No. 1; adjustments are shown on Schedule No. 2. Based on the adjustments, we find that the appropriate rate base for Windgate for purposes of this transfer is \$2,611 as of June 12, 1990, the date of the purchase agreement.

This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

Rates and Charges

Rule 29-9.044(1), Florida Administrative Code, governs rates charged when there are changes in ownership of a regulated utility. This rule states that the new owner must adopt and use the rates, classification and regulations of the former operating company unless a change is authorized by the Commission. Marion has not requested a change in the rates and we see no reason to change the rates at this time. Therefore, Marion is directed to continue charging the rates and charges authorized in Windgate's existing tariff. Further, Marion is hereby directed to file a revised tariff reflecting the change in ownership.

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REFUND OF UNAUTHORIZED CUSTOMER DEPOSITS

Windgate collected a \$30 customer deposit from 50 Bordering Oaks customers, but not from the 34 customers in Windgate Estates. Windgate's tariff does not authorize any customer deposits. Therefore, Windgate is in violation of its tariff and Rule 25-30.135, Florida Administrative Code, which states that no utility may modify or revise its rates or charges until the utility files and receives approval from this Commission. Accordingly, we find that the customer deposits shall be refunded with interest in accordance with Rule 25-30.360, Florida Administrative Code. Windgate shall file a final refund report with this Commission prior to the closing of the sale of its assets to Marion in accordance with Rule 25-30.360(7), Florida Administrative Code. Although Windgate has violated its tariff and Commission Rule in collecting these customer deposits, no fine will be imposed. Windgate has cooperated fully with this Commission and has agreed to refund all customer deposits with interest.

It is, therefore,

ORDERED by the Florida Public Service Commission that the application for the transfer of Certificate No. 385-W from Windgate Utilities, 3855-B N.E. 35th Street, Ocala, Florida 32670, to Marion Utilities, Inc., 710 N.E. 30th Avenue, Ocala, Florida 32670, is hereby approved. It is further

ORDERED that rate base, which for transfer purposes reflects the net book value, is \$2,611. It is further

ORDERED that Certificate No. 347-W is hereby amended to include the areas served by Windgate as described in Attachment A. It is further

ORDERED that Marion Utilities, Inc. shall continue to charge the former customers of Windgate Utilities the rates and charges previously approved for Windgate Utilities. It is further

ORDERED that Marion Utilities, Inc. shall submit a revised tariff reflecting the change in ownership. It is further

ORDERED that Windgate Utilities shall return Certificate No. 385-W to this Commission within thirty (30) days for cancellation. It is further

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ORDERED that prior to closing this sale, Windgate Utilities, Inc. shall file a final refund report regarding the customer deposit refunds as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as Proposed Agency Action, shall become final unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on as set forth in the Notice of Further Proceedings. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 28th
day of DECEMBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TCP

by: Kay Heizer
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action establishing rate base is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 18, 1991. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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ATTACHMENT A

Marion Utilities, Inc.

Marion County

TERRITORY DESCRIPTION

(Windgate Utilities)

The following described lands located in portions of Section 32, Township 14 South, Range 22 East, Marion County, Florida:

Section 32

The Northeast 1/4 of the Southwest 1/4 of said Section 32 EXCEPT the Northeast 1/4 of the Northeast 1/4 of the Southwest 1/4, and the West 260 Feet of said Southwest 1/4 of said Section 32.

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SCHEDULE NO. 1

Windgate Utilities
 Schedule or Rate Base
 As of June 12, 1990

<u>Description</u>	<u>Balance per Utility's Original Cost Study</u>	<u>Commission Adjustments</u>	<u>Balance Per Commission</u>
Utility Plant-in-Service	\$ 59,501	\$(3,088) (1)	\$ 56,413
Land	1,710	0	1,710
Accumulated Depreciation	0	(15,533) (2)	(15,533)
Contributions-in-Aid-of- Construction	0	(51,997) (3)	(51,997)
CIAC Amortization	<u>0</u>	<u>12,018 (4)</u>	<u>12,018</u>
TOTAL	<u>\$ 61,211</u>	<u>\$(58,600)</u>	<u>\$ 2,611</u>

Note: Explanation of adjustments appear on Schedule No. 2.

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SCHEDULE NO. 2

Windgate Utilities
 Rate Base Adjustments

<u>Description</u>	<u>Adjustment</u>
<u>Utility Plant-in-Service</u>	
1) To reduce plant in original cost study to reflect value of plant the year it was placed into service.	1) <u>\$(3,088)</u>
<u>Accumulated Depreciation</u>	
2) To reflect accumulated depreciation to date using Commission approved rates per Rule 25-30.140, F.A.C.	2) <u>\$(15,533)</u>
<u>Contributions-in-Aid-of-Construction</u>	
3) To reflect contributed plant as CIAC To impute charges authorized in tariff as CIAC	3) <u>\$(22,597)</u> <u>(29,400)</u>
Total CIAC Adjustment	<u>\$(51,997)</u>
<u>CIAC Amortization</u>	
4) To reflect amortization associated with CIAC using Commission approved rates per Rule 25-30.140, F.A.C.	4) <u>\$12,018</u>